

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 1100 OF 2005

Shakuntala Shankar Padalkar & Ors. ..Appellants

Versus

Ravindra Dhondiram Patil & Ors. ..Respondents

Mr.G.H.Keluskar for appellants

CORAM : P.V.KAKADE, J.

DATE : 4TH OCTOBER, 2005.

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by District Judge, Sangli dated 2nd February 2005 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Atpadi dated 23rd July 1998 decreeing the suit for partition and separate possession of the respective shares of the plaintiffs.

2. I have heard the learned counsel for the appellants. Perused the record.

3. The plaintiffs have filed the suit for separate possession of their legitimate share in the suit properties by effecting partition by metes and bounds and for consequential reliefs of mesne profits etc. The plaintiffs came with the case that the property was joint family property of the plaintiffs and defendant nos.1 to 3 and the transaction between the defendant no.1 and defendant no.10 in respect of the suit property belonging to the family was not binding upon them and therefore, such transaction was not for legal necessity and as such they were entitled for partition. The defendants contested the suit, inter alia, denying the allegations made by the plaintiffs. The defendants came with the case that the suit properties were sold for legal necessity and benefit of the family. The defendant nos. 5 to 7 came with the case that they were bona fide purchaser for value without notice and as such the suit was sought to be dismissed.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiffs

had proved that the suit properties are joint family properties of the plaintiffs and defendant nos.1 to 3 and the suit transaction executed by defendant no.1 in favour of defendant no.1 were not binding on the plaintiffs. Further it was held that the suit transaction were not for legal necessity as well as benefit of the family and the defendants 5 to 7 were not bona fide purchaser for value without notice and as such suit came to be decreed as prayed for. The Appeal was carried to the District Court, Sangli. The learned District Judge adjudicated the appeal on the basis of available evidence and came to the conclusion that the findings recorded by the trial judge were legal and proper and dismissed the appeal. Hence the present appeal.

4. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. The only question sought to be raised on behalf of the appellants is that the suit transactions were for legal necessity. However, both the courts below appreciated the evidence in that regard while holding that the defendants failed to prove that the suit transactions were for legal necessity and for

benefit of family. The evidence on record also show that it was for the first time in the course of evidence the defendants took a stance to the effect that about Rs.90,000/= were spent for tenancy litigation, however, it is not supported by evidence and in fact it appears that only one revision application to MRT was filed on behalf of the parties. Under such circumstances, the defendant No.1 is seen to have failed to establish the alleged legal necessity in this case. Both the courts below have concurrently found that the suit property is joint family property and is liable to be partition as prayed for. In my considered view, the concurrent findings recorded by both the courts are legal and proper and therefore, it would brook no interference.

5. In the result the appeal stands dismissed with no order as to costs.